

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
Case No. 7:23-cv-897

IN RE:)
)
CAMP LEJEUNE WATER LITIGATION) **JOINT STATUS REPORT**
)
This Document Relates To:)
ALL CASES)
)

The Plaintiffs' Leadership Group (the "PLG"), together with the Defendant United States of America ("Defendant" or the "United States") (collectively, the "Parties"), jointly file this Joint Status Report pursuant to the Court's Text Order of January 10, 2024. The matters required to be addressed in a Joint Status Report pursuant to Case Management Order No. 2 ("CMO-2") (D.E. 23) are set forth below:

(1) An update on the number and status of CLJA actions filed in the Eastern District of North Carolina

From February 11, 2023 to January 12, 2023, 1,483 Camp Lejeune Justice Act ("CLJA") complaints have been filed in this district. Fourteen cases have been dismissed; eleven of those were voluntary dismissals and the three others were pro se cases. The cases are divided as follows: Judge Dever – 365 cases; Judge Myers – 382 cases; Judge Boyle – 358 cases; and Judge Flanagan – 378 cases.

(2) An update on the number and status of administrative claims with the Department of Navy

There are approximately 158,252 administrative claims on file with the Department of Navy ("Navy"). The Navy has set up a secure storage system capable of receiving personally identifiable information and substantiating documents to intake, organize, and analyze claims for purposes of making decisions on CLJA claims. The Navy has established two pathways for

assessing CLJA claims. Under one pathway, the Navy will receive substantiating information directly from claimants or counsel. On November 30, 2023, the Navy invited law firms to submit fully developed claims for manual review and approximately ten firms are in the process of submitting claims packages under this pathway. Under the other pathway, the Navy accesses information developed through benefits determinations by the Veterans Administration (“VA”). The Navy recently entered an agreement with the VA that allows Navy personnel direct access to VA databases for purposes of obtaining information to assess CLJA claims. Navy personnel completed the training required for access to the VA database and are currently awaiting database access account creation by the VA. Finally on January 18, 2024, the Navy will invite the first eight law firms based on chronological order of bulk-filed claims into the new Claims Management System to validate existing claims data and begin uploading substantiation directly into the claims management system. Once the initial eight law firms are in the system validating their claims data, the Navy will phase in additional claimants and open claims filing in the system to the public over the coming months. An update on the status of the Navy’s settlement of CLJA administrative claims is included in section (5).

(3) An update on stipulations entered into between the Parties since the last status conference

On December 18, 2023, the United States proposed four additional stipulations since the last status conference. The PLG does not agree that the United States’ proposed stipulations are accurate. However, the PLG believes that there is potential common ground arising from the proposed stipulations of December 18, 2023. Thus, the PLG intends to propose counter-stipulations in response.

The United States has agreed to six stipulations proposed by the PLG. The United States will be proposing additional stipulations based on its Answer to the PLG’s Master Complaint, filed

on November 20, 2023. (D.E. 50). The PLG is also evaluating which additional stipulations to propose in light of that Answer.

(4) A summary of the discovery conducted since the last status conference:

The Parties have agreed to file separate summaries of the discovery conducted since the last status conference. The Parties' respective summaries appear below:

The PLG's Position:

The PLG believes that discovery is now progressing reasonably well and that the Parties are on track to meet the deadlines set forth in Case Management Order No. 2.

The Parties have made material progress in resolving their discovery disputes concerning Defendant's document production. For context, the PLG filed a Motion to Compel Document Production in Response to Corrected First Set of Request for Production on December 14, 2023. [D.E. 81]. In response, Defendant filed a Cross-Motion for Protective Order on December 21, 2023. [D.E. 93]. Since those filings, the Parties have participated in several meet and confer videoconferences designed to resolve all issues with Defendant's document production.¹ Further, the Parties have exchanged letters proposing various compromises to resolve the above-referenced motion to compel and cross-motion for protective order. While the PLG does not agree with some positions taken by Defendant concerning its document production, the Parties are productively working through these issues. The PLG believes that there is a reasonable likelihood that these differences will be resolved in the near future. Therefore, consistent with the Court's Minute Entry of January 9, 2024 [D.E. 105], the PLG continues to believe that the referenced motions should be held in abeyance.

¹ However, the Parties will not be able to informally resolve their dispute concerning the production of the Agency for Toxic Substances and Disease Registry's ("ATSDR") Cancer Incident Study ("CIS"). This discovery dispute is pending before the Court. [D.E. 101].

As required in the Court's Order of December 21, 2023 [D.E. 91], the PLG produced the social security numbers and dates of birth for CLJA plaintiffs on January 10, 2024.

On December 11, 2023, Defendant served a First Set of Requests for Production to Discovery Pool Plaintiffs. On January 10, 2024, the PLG produced responsive documents on behalf of every Track 1 Plaintiff. The Parties have exchanged letters and held a meet and confer concerning the PLG's document production. The PLG believes that Defendant's concerns have been generally addressed, but to the extent that Defendant continues to have concerns with the PLG's document production, the PLG believes that the parties can work together to resolve the issues promptly.

Defendant has noticed the depositions of several Track 1 Plaintiffs. At the time of this Joint Status Report, three depositions of Track 1 Plaintiffs have been taken and several more have been scheduled. Some issues have arisen during these depositions. However, at present, the PLG believes that all of these issues will be resolved informally among the Parties.

In an Order of November 29, 2023, the Court required that every Track 1 Plaintiff serve, by January 19, 2024, the following documents: (a) Discovery Pool Profile Form ("DPPF"), (b) Veterans' Affairs Form 10-5345 – Request for and Authorization to Release Health Information, and (c) Form SF 180 – Records Request Authorization Form. [D.E. 62]. The PLG has dedicated substantial time and resources to finalizing the DPPFs and related forms. The PLG expects to provide the DPPF and related forms on behalf of all Track 1 Plaintiffs to Defendant on January 19, 2024.

United States' Position:

On December 22, 2023, Plaintiffs served the United States with Interrogatories and Requests for Production "to be separately served as to each of the 100 plaintiffs who are identified

as Track 1 Discovery Pool Plaintiffs.” The United States is diligently working to prepare its responses to Plaintiffs’ discovery requests, and will provide the responses to Plaintiffs on or before the January 22, 2024 deadline. The United States also continues to produce documents on a rolling basis in response to Plaintiffs’ other outstanding Requests for Production, and believes it will be able to complete its responses to several of those Requests for Production by the end of February 2024.

The Parties are continuing their discussions regarding the Marine Corps’ digitized muster rolls requested in Plaintiffs’ RFP Nos. 2 and 3 (First Set). The United States is in regular contact with the Marine Corps regarding their efforts to retrieve and produce any previously digitized versions of the requested muster rolls, and continues to promptly provide updates to Plaintiffs. The United States has offered to coordinate a meet and confer between Plaintiffs’ and the Marine Corps’ technical teams, and awaits Plaintiffs’ response to this invitation.

On January 8, 2024, Plaintiffs submitted a “proposal to resolve certain discovery disputes” arising from eight of Plaintiffs’ Requests for Production. Specifically, Plaintiffs requested production of “the ATSDR’s ‘water modeling’ and ‘health effects’ complete project files,” which would satisfy Request No. 8 from Plaintiffs’ First Set of Requests for Production and the entirety of Plaintiffs’ Second Set of Requests for Production. Plaintiffs would also agree to withdraw their December 14, 2023 Motion to Compel (D.E. 81). This week, the United States will be requesting clarification from Plaintiffs regarding their proposal, and anticipates offering a potential compromise that would be more feasible to produce before the end of fact discovery. The Parties will conduct a meet and confer to further discuss this matter.

As of the date of this Joint Status Report, the United States has requested 51 depositions of Tier 1 Discovery Plaintiffs. To date, the Parties have confirmed mutually agreeable dates for 42

plaintiff depositions to proceed in January through March 2024. The United States has provided availability for the nine pending plaintiff deposition requests and is awaiting a response from Plaintiffs' counsel confirming dates.

(5) Update on individual and global settlement efforts:

As of January 16, 2024, the Torts Branch has determined that thirty-seven (37) cases in litigation meet the Elective Option ("EO") criteria through documentary verification. The case breakdown by injury includes: 13 Bladder Cancer, 10 Kidney Cancer, 5 non-Hodgkin's Lymphoma, 4 Kidney Disease, 2 Parkinson's Disease and 2 Multiple Myeloma and 1 Leukemia. Four (4) offers have been accepted by plaintiffs on cases of Bladder Cancer (\$150,000), Kidney Cancer (\$300,000), Parkinson's Disease (\$400,000), and Kidney Disease (End Stage Renal Disease) (\$100,000). Three (3) offers were rejected by plaintiffs on cases of Bladder Cancer, Kidney Cancer and Multiple Myeloma. Six (6) offers have expired, including 3 cases of Kidney Cancer, 2 cases of non-Hodgkin's Lymphoma, and 1 case of Leukemia. The other twenty-four (24) settlement offers are pending.

Further, the DOJ has approved offers for fifty-two (52) claimants in reliance on information provided by the Navy. Eight (8) settlement offers have been accepted. Two (2) offers have been rejected. Ten (10) offers have expired, and the other thirty-two (32) offers are pending.

Payments have been sent for the eight accepted settlement offers made by the Navy, and one accepted offer made by DOJ, totaling \$2,200,000. Four cases of Leukemia resulted in three payments of \$300,000 and one payment of \$150,000. Three cases of Bladder Cancer resulted in two payments of \$150,000 and one payment of \$300,000. One case of non-Hodgkin's Lymphoma resulted in a \$300,000 payment. One case of Parkinson's Disease resulted in a \$250,000 payment.

The Parties have had several preliminary discussions regarding the possibility of a global resolution of claims that remain in the administrative and legal processes. The Parties continue to negotiate a resolution questionnaire and resolution roadmap.

(6) Any other issues that the parties wish to raise with the Court:

a. In a text Order on December 11, 2023, the Court stated: “[W]here counsel appears to be contemplating the appointment of a Settlement Master in these cases, the Court requests counsel submit names of individuals to be considered for such appointment. Counsel may include these in either of the aforementioned status reports,” due December 19, 2023 and January 2, 2024.

In a Joint Motion for Extension of Time (D.E. 99), the PLG and Defendant jointly requested that the Court grant the parties an additional two weeks, until January 16, 2024, to assess candidates, exchange names with each other, and attempt to reach agreement on submissions to the Court.

Members of the PLG reached out broadly for recommendations and interviewed over half a dozen candidates to serve as Settlement Master. The individuals had varied backgrounds and came from all parts of the country, New York to Texas to North Carolina. Ultimately, the PLG narrowed down its list to two individuals and exchanged names with Defendant, which had proposed one individual. The Parties separately interviewed the three finalists and now jointly recommend that the Court consider Tom Perrelli of Jenner & Block to serve as Settlement Master (subject to the Parties’ reaching agreement with Mr. Perrelli on a reasonable fee structure, which the Parties are actively discussing with Mr. Perrelli). Mr. Perrelli has significant experience settling litigation of this scale and scope—he has demonstrated the diligence, creativity, and resolve the Parties believe to be critical for litigation of this magnitude. What’s more, Mr. Perrelli previously

served as the Associate Attorney General of the United States, making him familiar with the inner-workings of DOJ. Both Parties believe such familiarity will be useful.

That said, the Parties recognize that the Settlement Master is an extension of the Court, and that the individual appointed to the role will work closely with the Judges of this Court. As a result, the Parties, as always, will defer to the Court's decisions: If the Court were to appoint someone other than Mr. Perrelli to serve as Settlement Master, the Parties would remain as committed to achieving a just resolution for all those injured on Camp Lejeune. The Parties are also happy to share further information with the Court about the candidates they considered.

b. Section XI. A. iv. e. of the Discovery and Trial Plan section of this Court's September 26, 2023 Case Management Order No. 2 (D.E. 23) establishes deadline based on the entry of a "Track 1 Order." On January 12, 2024, the parties submitted a proposed Track 1 Order to the Court.

c. At the Status Conferences on December 5, 2023 and January 9, 2023, Magistrate Judge Jones asked the parties provide information regarding the number of claims available to be filed for each disease proposed by Plaintiffs and Defendant for the Track 2 Discovery Pool.

At the Status Conference on January 9, 2024, Magistrate Judge Jones asked that the Parties provide data concerning the types of diseases in the administrative process that are eligible to be filed with this Court, and the number of claims within each said disease type. The PLG believes that this information must generally be provided by Defendant. The Navy has started its analysis of claims, which is only in the very early stage given the status of its claims management system that is inputting data from over 150,000 claims. The claims provide just bare information, list diseases differently, and typically do not provide any substantiating documentation. Based on the

first 29,000 claims input into the system, the Navy has provided the following breakdown of claims. This cannot be considered representative of the entire universe of claims received.

Kidney Cancer	1,090
Liver Cancer	501
Non-Hodgkin's Lymphoma	750
Bladder Cancer	1,447
Leukemias	634
Multiple Myeloma	790
Parkinson's Disease	1,120
Kidney Disease	2,970
Systemic Scleroderma	502
Other Diseases	6,809

Of the “Other Diseases” by far the largest number are prostate cancer (over 4,000), followed by cardiac defects (over 1,000), followed by esophageal cancer, aplastic anemia, cervical cancer, and rectal cancer (all less than 500). Approximately seventy-five percent of the claims report between 1 and 3 injuries.

The Navy does not expect to have more complete representative numbers of the disease breakdown until March given the current status of the claims management system.

On November 27 and December 27, 2023, the Parties filed certain recommendations for Track 2 and Track 3 diseases. (D.E. 56, 58, 97 & 98).

[Signatures follow on next page]

DATED this 16th day of January 2024.

Respectfully submitted,

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